

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED

OCT 30 2003

LORILLARD TOBACCO COMPANY,
a Delaware corporation,

Plaintiff,

v.

A & E OIL, INC., d/b/a MOBIL,

Defendant.

Civil Action No. 03C 5833

Judge Hart

Magistrate Judge Mason

JURY DEMANDED

FILED
OCT 21 2003

NOTICE OF MOTION

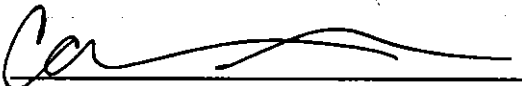
To: Nancy Nowak Sander
Attorney at Law
8532 School St.
Morton Grove, IL 60053

PLEASE TAKE NOTICE that, on Wednesday, October 29, 2003 at 11:00 a.m. or as soon thereafter as counsel may be heard, we shall appear before the Honorable Judge Hart or any other judge sitting in his stead, in Room 2243 of the Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois, and shall present the Plaintiff's Motion to Compel Discovery Responses, a copy of which is attached hereto and hereby served upon you.

Dated: October 21, 2003

LORILLARD TOBACCO COMPANY

By:


John S. Pacocha
Paul A. Haskins
Jeffrey Mote
Cameron Nelson
Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I, Cameron M. Nelson, certify that on October 21, 2003, a true and correct copy of this **NOTICE OF MOTION** and **PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSES** was served on each of the following by facsimile and first-class mail:

Nancy Nowak Sander
Attorney at Law
8532 School St.
Morton Grove, IL 60053

A handwritten signature in black ink, appearing to be 'C. Nelson', written over a horizontal line.

Cameron M. Nelson

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PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSES

Plaintiff Lorillard Tobacco Company ("Lorillard"), by its attorneys, pursuant to Fed. R. Civ. P. 37, moves this Court for an Order compelling Defendant A&E Oil, d/b/a Mobil, to respond to Lorillard's interrogatories and document requests. In support of the motion, Lorillard states as follows:

1. Lorillard's First Set of Interrogatories and First Set of Document Requests served upon Amoco on August 21, 2003. Responses were due no later September 21, 2003. (Exhibits A and B.)

2. Lorillard's counsel conferred with A&E Oil's counsel on or about September 19, 2003 and agreed to extend A&E Oil's time in which to respond to discovery to October 3, 2003. (Exhibit C.)

3. At a status hearing held on September 19, 2003, this Court set a status hearing for November 19, 2003, and admonished Lorillard's counsel to complete discovery by that date.

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4. Lorillard received no response on October 3. On October 9, 2003, Lorillard's counsel conferred with A&E Oil's counsel by telephone. A&E Oil's counsel advised Lorillard that it would respond by October 20. Lorillard's counsel advised A&E Oil's counsel that Lorillard would file a Motion to Compel if responses were not received by October 20. (Exhibit D.)

5. Amoco did not serve responses on October 20, 2003. Lorillard's counsel again called A&E Oil's counsel. A&E Oil's counsel stated that she had not even spoken with her client since the last time she had conferred with Lorillard's counsel. (Exhibit E.)

6. Lorillard has met its duty to confer over this discovery dispute, pursuant to Local Rule 37.2 and Fed. R. Civ. P. 37, by telephone conference on the afternoon of October 10. See Rule 37 certification attached.

7. A&E Oil's pattern of ignoring its repeated promises to produce by a date certain leads Lorillard to conclude that Amoco is not serious about its discovery obligations in this case.

8. Responses to written discovery requests must be served on the requesting party within thirty (30) days of the request. Fed. R. Civ. P. 33, 34. Fed. R. Civ. P. 37 provides that a court may compel disclosure pursuant to a motion. Fed. R. Civ. P. 37. A court has inherent authority to sanction parties who refuse to comply with discovery requests. Fed.R.Civ.P. 26(b)(4), Jefferson v. Davis, 131 F.R.D. 522 (N.D.Ill. 1990); Wooten v. Johnson & Johnson Products, Inc., 621 F.Supp. 747 (N.D.Ill.1985) (awarding attorney's fees for failure to comply with discovery requests).

WHEREFORE, Lorillard respectfully requests that:

A. The Court enter an Order compelling defendant A&E Oil to serve immediately written answers to Lorillard's pending interrogatories and written responses to Lorillard's pending document requests, and to produce immediately all documents and things in its possession responsive to the document requests.

B. Award Lorillard the fees and costs associated with this motion practice, as a discovery sanction under Fed. R. Civ. P. 37(a)(4)(A).

Dated: October 21, 2003

LORILLARD TOBACCO COMPANY

By:



John S. Pacocha
Paul A. Haskins
Jeffrey Mote
Cameron Nelson
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**SEE CASE
FILE FOR
EXHIBITS**